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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/838,133	04/20/2001	David Verchere	164.0001	9529
35987 7590 02/02/2010 JOSEPH P. CURTIN 1469 N.W. MORGAN LANE PORTLAND, OR 97229				
EXAMINER GARG, YOGESH C				
ART UNIT 3625		PAPER NUMBER		
MAIL DATE 02/02/2010		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

09/838,133

**Applicant(s)**

VERCHERE, DAVID

**Examiner**

Yogesh C. Garg

**Art Unit**

3625

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5, 7, 8, 11-15, 17, 18 and 21-58 is/are pending in the application.
- 4a) Of the above claim(s) 21-58 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-5, 7, 8, 11-15, 17 and 18 is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 December 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF-08)  
Paper No(s)/Mail Date 12/30/2009.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application.
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 12/30/2009 has been entered.
2. Claims 1-5 and 11 have been amended and new claims 21-58 filed. Claims 6,9,10, 16, 19, 20 were previously canceled. Claims 1-5, 7-8, 11-15, 17-18 were previously allowed. Claims 1-5, 7-8, 11-15, 17-18 and 21-58 are pending.

### ***Election by Original Presentation***

3. Newly submitted claims 21-58 are directed to inventions that are independent or distinct from the invention originally claimed for the following reasons:

Originally claimed invention (see independent claims 1 and 11) are directed to a computer implemented method and system requiring essentially a user interface device with GUI displaying representations of a product, a data storage device storing product parameter data and pricing algorithm and a product parameter identifying and pricing computer which receives over a computer network the request created by a user by selecting product parameters on the GUI. Based on the created request the identifying

and pricing computer breaks the request into three components, that is an item, a process and artwork and then based identifying each of the components a pricing algorithm from the data storage device is applied to generated dynamically and then further linking the item, the process and the artwork a product identifier is generated and then finally the product with the generated price and identifier is branded.

Newly submitted claims 21-39 are directed to a process which does not require any of the components of the originally filed inventions [see claim 1] that is a user interface device with GUI displaying representations of a product, a data storage device storing product parameter data and pricing algorithm and a product parameter identifying and pricing computer which receives over a computer network the request created by a user by selecting product parameters on the GUI. In fact, the process of claim 21 have two manipulative steps that is receiving a request via a communication network and generating a price. A communication network, in its broadest possible interpretation, can be manual contact networks wherein requests from one group that is requestors can be communicated to another group providers manually. The step of generating price can be done manually, as recited. Therefore, it can be seen that the process recited in claim 21 is distinct from that of recited in the originally filed claim 1.

Similarly newly submitted claims 40-58 are directed to a system which is quite distinct from the system claimed in the originally filed claims [see independent claim 11]. As analyzed above the structural components of originally filed claim 11 comprise essentially a user interface device with GUI displaying representations of a product, a data storage device storing product parameter data and pricing algorithm and a product

parameter identifying and pricing computer which receives over a computer network the request created by a user by selecting product parameters on the GUI. Based on the created request the identifying and pricing computer breaks the request into three components, that is an item, a process and artwork and then based identifying each of the components a pricing algorithm from the data storage device is applied to generated dynamically and then further linking the item, the process and the artwork a product identifier is generated and then finally the product with the generated price and identifier is branded. The system of claim 40, as recited, does not require these structural components and does not implement the functions required by the system recited in claim 11.

Therefore, from the above, it is clear that newly submitted claims 21-58 are independent and distinct from the originally filed claimed inventions , see claims 1 and 11.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, newly submitted claims 21--58 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

In view of the foregoing, originally filed claims 1-5, 7, 8, 11-15, 17 and 18 will be considered for further action on merits.

***Allowable Subject Matter***

4. Claims 1-5, 7, 8, 11-15, 17 and 18 were allowed in the previous office action mailed 9/30/2009. Currently filed claims 1-5 and 11 are amended but amendments are directed to matters of form not affecting the scope of invention. Therefore claims 1-5, 7, 8, 11-15, 17 and 18 are allowable for the same reasons already stated in the Notice of Allowance mailed 9/30/2009.

5. If the withdrawn claims 21-58 are cancelled then the application can be placed in condition for allowance.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yogesh C. Garg whose telephone number is 571-272-6756. The examiner can normally be reached on Increased Flex/Hoteling.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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